

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

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Billed Party Preference for  
InterLATA 0+ Calls

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CC Docket No. 92-77

**COMMENTS OF CLEARTEL COMMUNICATIONS, INC., OPERATOR  
SERVICE COMPANY, AND TELTRUST COMMUNICATIONS  
SERVICES, INC.**

Pursuant to Section 1.429(f) of the Federal Communications Commission's ("Commission") rules (47 C.F.R. §1.429(f)), Cleartel Communications, Inc. ("Cleartel"), Operator Service Company ("OSC") and Teltrust Communications Services, Inc. ("Teltrust") (together "Commenters"), by their undersigned counsel, respectfully submit their comments to petitions for clarification and/or reconsideration filed on April 9, 1998 that request special treatment in the application of the Commission's January 29, 1998 Order.<sup>1</sup> As described in detail in their Joint Petition,<sup>2</sup> Commenters face serious discrimination in light of the Order which will significantly hinder their ability to compete in the operator service market. This discrimination and its detrimental affect will be magnified and concentrated exponentially on individual network-based OSPs if the Commission chooses to carve out exceptions on an individual case basis for carriers requesting special treatment. Furthermore, the Commission's grant of special treatment on an individual case basis will create an environment of uncertainty and inequity by providing some OSPs the opportunity to avoid

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<sup>1</sup> *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, CC Docket No. 92-77, released January 29, 1998 ("Order").

<sup>2</sup> On April 9, 1998, Cleartel, OSC, and Teltrust filed a Joint Petition for Reconsideration of the Commission's Order ("Joint Petition").

burdensome compliance by formally or informally<sup>3</sup> classifying their pay phones as “store and forward.” As demonstrated in the Joint Petition and other petitions filed in this proceeding, the Commission should rethink its Order and apply the reconsidered rules to *all* OSPs in an equitable manner, thereby avoiding not only the blatant and harmful discriminatory treatment currently imposed on network-based OSPs, but the inevitable concentration of these harms on individual network-based OSPs as those with resources petition for special treatment or waiver.

## I. INTRODUCTION

On January 29, 1998, the Commission released its Order requiring all OSPs to provide on-demand rate disclosure for all non-access 0+ calls made from public phones or other aggregator locations. In its Order, the Commission adopted an unreasonably short and accelerated compliance deadline of **July 1, 1998** for network-based OSPs.<sup>4</sup> On April 9, 1998, Commenters petitioned the Commission to reconsider its Order and requested a stay of the Order pending a decision on their Joint Petition. Eight other parties filed petitions for clarification and/or reconsideration,<sup>5</sup> none of which directly opposed the views and arguments presented in the Joint Petition filed by Cleartel, OSC and Teltrust. In fact, rather than contradict the concerns raised in the Joint Petition (regarding, *inter alia*, the anti-competitive effects and unjustifiable burdens placed solely upon network-based

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<sup>3</sup> By formally, we are referring to OSPs that petition the Commission for special treatment. By informally, we are referring to OSPs that make the determination on their own without any Commission approval.

<sup>4</sup> “Network based” OSPs refers to those OSPs that rely on switches to process operator assisted calls. “Store and forward” OSPs refers to OSPs that utilize microprocessor based equipment at the payphone location to handle call processing and billing.

<sup>5</sup> Ameritech Petition for Clarification or Reconsideration (04/09/98); AT&T Petition for Clarification and/or Reconsideration (04/09/98); Bell Atlantic Petition for Clarification (04/09/98); BellSouth Petition for Clarification (04/09/98); Citizens United for Rehabilitation of Errants (“C.U.R.E.”) Petition for Clarification (04/09/98); Petition for Partial Reconsideration or Clarification of the Inmate Calling Service Providers Coalition (04/09/98); One Call Communications, Inc. Petition for Clarification (04/09/98); Petition for Clarification or Waiver or, in the alternative, for Clarification and Reconsideration of US West, Inc. (04/09/98).

OSPs by the Commission's Order), many of the other parties' petitions in fact substantiate those concerns as discussed below.

## **II. SELECTIVE IMPLEMENTATION OF THE COMMISSION'S ORDER THREATENS TO CREATE AN ANTI-COMPETITIVE ENVIRONMENT**

As detailed in the Joint Petition, the shorter compliance deadline coupled with the current lack of technology means that network-based OSPs, charged with the responsibility to comply with the Order, will have to implement costly, inefficient, and customer unfriendly interim measures. Since the network-based OSPs ultimately will have to alter their systems yet again once technology becomes available, there will be no way for them to recoup any of their investment in the interim measures. The only way for many network-based OSPs to survive in this draconian environment will be to attempt to pass on as much of their implementation costs to consumers as they can, thus harming the same consumers that the Commission's Order was designed to protect, as well as harming the individual OSP's competitive edge in the marketplace.

In their Joint Petition, Commenters made clear the competitive benefits that store and forward OSPs will now receive under the Commission's Order. If some OSPs are granted special treatment, they too will reap the competitive benefits, to the detriment of those OSPs remaining in the network-based "pool." Both store and forward OSPs and those OSPs that obtain special treatment will avoid the extensive financial and technological burdens of interim measures, have the opportunity to develop and select the best and most cost effective technology, and have the added advantage of being able to learn from and capitalize on the experiences of the remaining network-based OSPs, since the network-based OSPs will have had to implement the expensive interim systems 15 months earlier. Basically, with the grant of special treatment, the pool of OSPs that

avoid the expensive interim measures becomes larger, further exaggerating the disparate treatment and the harmful effects of that treatment among remaining OSPs.

If the Commission yields to demands to carve out exceptions to its Order on an individual case basis, it will place many network-based OSPs at yet an additional disadvantage. Store and forward OSPs and OSPs that obtain special treatment will be content with their award of additional time in which to comply, and turn their full attention on developing technology, and innovating their systems in the most efficient and cost effective manner. Meanwhile, other network-based OSPs will continue to devote additional time and resources to re-characterize their systems as store and forward, or block the reclassification of their network-based competitors. Thus, the Commission's initial decision to distinguish and discriminate in favor of certain OSPs provides those OSPs with additional benefit, and harms complying network-based OSPs yet again.

### **III. DE FACTO DISCRIMINATION - AN INADVERTENT IMPACT OF THE ORDER**

In its petition, AT&T requests clarification that approximately 8,700 of its pay phones fall within the classification of "store and forward." AT&T adds that it intends to seek a waiver of the application of the Commission's Order entirely.<sup>6</sup> The RBOCs also petition for a special exemption from the Commission's Order, based upon distinctions of traffic types. If the Commission grants these or similar petitions, the pool of network-based OSPs upon whom the earlier, impractical deadline remains will be substantially reduced. Imposing the burdensome on-demand rate disclosure rule on a small pool of network-based OSPs will magnifying the burden, thus increasing and concentrating the damage that the Commission's discriminatory treatment of OSPs has already created.

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<sup>6</sup> Cleartel, OSC and Teltrust may be forced to petition the Commission for a waiver of the July 1, 1998 compliance date if the date is not changed by the Commission's own action. Commenters requested a waiver of the Order in their Joint Petition. Commenters believe good cause has been demonstrated. See Joint Petition.

AT&T's petition confirms Commenters' concern, expressed in their Joint Petition, that certain network-based OSPs would become creative and attempt to classify their pay phones as "store and forward" in order to capitalize on the financial and competitive benefits of the additional 15 months in which to comply with the Commission's Order. Some OSPs may petition the Commission, while other OSPs may determine which type of system they utilize on their own. An OSP's attempt to redefine its operator systems to avoid complying with the Commission's Order is not surprising. *Every* OSP faces drastic financial, administrative and technical hurdles, and requires time to fully fulfill the Commission's Order. The Commission's grant of special treatment to some OSPs, using a case by case approach, would create additional inequity and undue hardship, as those OSPs that have the resources escape the 'network-based' classification, and those without remain in the pool to bear more and more of the costs of the Commission's Order.

In the end, the Commission's Order granting additional compliance time to select OSPs unnecessarily creates an environment fraught with uncertainty, and compels individual OSPs to expend time and resources on administrative and procedural stratagems, simply to remain competitive - time and resources which could have been spent developing effective, efficient technology and systems designed in the interests of consumers. The Commission could readily avoid this uncertainty and waste by simply leveling the playing field, and extending the same deadlines, benefits and duties to all competitors in the marketplace.

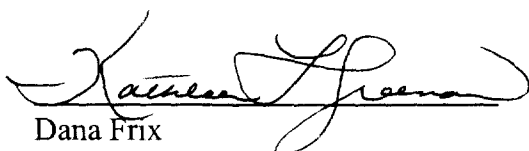
### **CONCLUSION**

It is easy to see that under the circumstances described above, network-based OSPs that are at the margin will be driven from the marketplace or will simply not comply, thus further damaging the operator service industry's image and injuring complying OSPs competitive position. This is clearly not in the public interest. If some OSPs ignore the burdensome rule, the objectives of the rule

are not met. Furthermore, a reduction in competitors in the marketplace means potentially less innovation, fewer service offerings, less choice and ultimately higher prices for consumers. Commenters reaffirm their position that the Order, which discriminates in favor of "store and forward OSPs" and now those OSPs who obtain special treatment or who take it upon themselves to re-classify their operator systems, will have deleterious effects on the marketplace and eventually on consumers, and that equitable treatment of all OSPs would result in a fairer, more competitive, and more consumer friendly marketplace. Commenters believe and the record proves that the Order as it currently stands is unworkable, blatantly discriminatory, and fails to address the problems and concerns of the public.

Request for waivers and/or special treatment demonstrate that OSPs require more time to comply with the Commission's rate disclosure requirements. More importantly, the petitions filed demonstrate that the Order has unnecessarily created an environment of uncertainty, inequity and waste, and should be rethought. The Commission should establish clear, workable, and above all, equitable guidelines to promote fairness and competition to the benefit of the public.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dana Frix", is written over a horizontal line.

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May 6, 1998

## CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 1998, a copy of the foregoing *Comments of Cleartel Communications, Inc., Operator Service Company, and Teltrust Communications Services, Inc.*; CC Docket No. 92-77 was delivered by hand or first class mail to:

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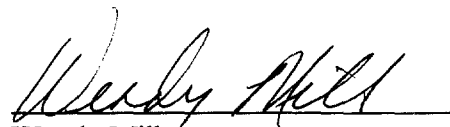
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